

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2458

PETITION OF ROSEMARY J. BEAN

OPINION OF THE BOARD
(Opinion Adopted February 7, 2001)
(Effective Date of Opinion: February 26, 2001)

Case No. S-2458 is an application for a special exception pursuant to Section 59-G-2.29 (Home Occupation, Major) of the Zoning Ordinance to permit a major home occupation (bookkeeping and secretarial services).

Pursuant to Section 59-A-4.11 of the Montgomery County Zoning Ordinance, the Board of Appeals held a public hearing on the application on Wednesday, February 7, 2001 at 1:30 p.m. Rosemary Bean appeared and testified. Bill Landfair of the Maryland National Capital Park and Planning Commission testified about the contents of his report and recommendation to the Board of Appeals. Martin Klauber, Peoples' Counsel also appeared. Norman Knopf, Esquire, appeared on behalf of the Battery Park Citizens' Association, which opposed the application.

Decision of the Board: **Special Exception Denied.**

The subject property is Lot 7, Block J, Battery Park Subdivision, located at 8000 Old Georgetown Road, Bethesda, Maryland, in the R-60 Zone.

EVIDENCE PRESENTED

1. Mrs. Bean applied for a Major Home Occupation to do general bookkeeping and secretarial work at the subject property at 8000 Old Georgetown Road in Bethesda, Maryland. [Exhibit Nos. 1 and 3(a)].

2. Rosemary and Allen Bean reside at 8000 Old Georgetown Road and lease that property from Jay and Bernice Kaufman [Exhibit No. 5, Transcript, February 7, 2001, page 12].

3. Mrs. Bean testified that she has two employees at 8000 Old Georgetown Road: Mr. Kaufman and his brother-in-law, Mr. Paulney [Transcript, February 7, 2001, pages 8 and 16].

4. Mrs. Bean testified that Mr. Kaufman and Mr. Paulney are employees of a hotel management company named the Qurzon Group which manages hotels in other states [Transcript, February 7, 2001, pages 7-9]. She further testified that she has a service contract with them to do bookkeeping, and that they are present at 8000 Old Georgetown Road during working hours to train her how to do their bookkeeping [Transcript, February 7, 2001, page 7].

5. In response to questioning, Mrs. Bean testified that the main office for the Qurzon Group is at 8000 Old Georgetown Road. [Transcript, February 7, 2001, page 9].

6. Mrs. Bean testified that Mr. Kaufman and Mr. Paulney also do “some of their own work” on the premises [Transcript, February 7, 2001, page 15] and that they sometimes have visitors to the premises who do business with them, and not with Mrs. Bean. [Transcript, February 7, 2001, page 16].

6. Maryland National Park and Planning Commission (MNCPPC) staff analyzed the proposed special exception use and recommended denial of the application, based upon its failure to comply with Section 59-G-2.29(d). In his report and in his testimony Mr. Landfair found that Mrs. Bean is not actually the owner of the proposed business, but rather that one of the employees is the owner, and Mrs. Bean is his employee. Mr. Landfair’s opinion is that this arrangement is more in the nature of a non-resident professional office, [Section 59-2.38] and not consistent with the requirement in Section 59-G-2.29(d) that the use must be conducted by members of the family, residing in the dwelling, with a maximum of 2 nonresident employees. [Exhibit No. 16 and Transcript, February 7, 2001, page 6].

FINDINGS OF THE BOARD

1. Section 59-A-2.21 of the Zoning Ordinance defines a home occupation, in part, as:

Any occupation, other than a registered home health practitioner’s office, that provides a service or product and is conducted within a dwelling unit by a resident or residents of the dwelling unit without diminishing its residential character.

2. Section 59-G-2.29(d) of the Zoning Ordinance provides in part:

The home occupation office must be conducted only by members of the family, as defined in Section 59-A-2.1, residing in the dwelling and a maximum of 2 nonresident employees or associates to be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic.

3. The Board concurs with MNCPPC staff's finding that Mr. Kaufman and Mr. Paulney are not employees of Mrs. Bean's bookkeeping and secretarial business. The Board is not persuaded that the role which Mrs. Bean described of Mr. Kaufman and Mr. Paulney to train her in how to do their bookkeeping is truly an employee-employer relationship. In addition, Mrs. Bean identified Mr. Kaufman and Mr. Paulney as employees of the Qurzon Group, with main offices at the subject property. Finally, Mrs. Bean testified that in addition to working for her, Mr. Kaufman and Mr. Paulney do other work, for the Qurzon Group at the subject property

4. The Board finds that the work of the Qurzon Group is the principle business being conducted on the premises, not the proposed bookkeeping and secretarial business, and that Mr. Kaufman and Mr. Paulney appear to be directing Mrs. Bean's work. Therefore, the business is not being conducted by members of the family, residing in the dwelling. The Board believes that the proposed working arrangement in fact consists of a non-resident employer conducting business from the subject property with a resident employee. The Board believes that this scenario circumvents the intent of the provisions of Section 59-G-2.29(d). Therefore, the application must be denied.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the resolution required by law as it decision in the above-entitled case.

Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in the Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of March, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.